

(1991) 09 MAD CK 0069
In the Madras High Court
Case No : Writ Appeal No. 1064 of 1989

R. Ramanathan Chettiar

APPELLANT

Vs

M.C. Manickam Pillai and 45 others

RESPONDENT

Date of Decision : 04-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 09 MAD CK 0069

Hon'ble Judges : Thanikkachalam, J;Nainar Sundaram, J

Bench : Division Bench

Advocate : K. Yamunan, for the Appellant; K. Sengottian, for the Respondent

Judgement

Nainar Sundaram, J.—The petitioner in W.P. No. 1609 of 1981 is the appellant in this writ appeal. The respondents in the writ petition are the respondents in this writ appeal. Some of the respondents are dead and some have been given up in the writ appeal, but that does not alter the spirit and the scope of the controversy in the writ appeal. Convenience suggests that we refer to the parties as per their nomenclature in the writ petition. The petitioner claimed for ryotwari patta in respect of the lands in question under S. 3 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948, hereinafter referred to as the Act. The Settlement Officer investigated into the relevant questions and held that the petitioner failed to prove that the lands were his private lands, except S. No. 172/2. The petitioner preferred an appeal to the concerned Estates Abolition Tribunal, hereinafter referred to as the Tribunal and the Tribunal upheld the decision of the Settlement Officer. The petitioner came to this Court by way of writ petition, impeaching the decision of the Settlement Officer, as confirmed by the Tribunal. The learned single Judge, who dealt with the writ petition, took the view that it will be proper for the petitioner to resort to the ordinary civil process to establish title and in this view dismissed the writ petition, directing the suit if it comes to be filed to be heard and disposed of on merits without in any way being influenced by the orders impugned in the writ petition. This writ

appeal is directed against the order of the learned single Judge. Mr. K. Yamunan, Learned Counsel for the petitioner, would submit that in respect of an adjudication that ultimately comes to be done under S. 15 of the Act, it must be held to be final and not liable to be questioned in any court of law, since the adjudication has come to be done, after examining all the relevant questions for which there is a machinery under the Act and in that contingency the Civil Court's jurisdiction must be held to be barred. In support of his submission, Learned Counsel for the petitioner cited the pronouncement of Ismail, J. as he then was, in *Narayanaswami Velalar v. Rangaswami Konar* 86 L.W. 276. Learned Counsel for the petitioner also drew our attention to the features of distinction drawn by the Supreme Court in *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, with regard to proceedings under S. 11 of the Act and the proceedings covered by S. 12 to 15 of the Act, to say that in the latter case there has got to be an adjudication of the nature and character of the land and history thereof. Learned Counsel submits that so far as the decisions under S.11 of the Act is concerned, the rule that now prevails is that the Civil Court's jurisdiction is not ousted but in respect of the decision under S.15 of the Act, such could not be the position. When we take note of the pronouncements in *Narayanaswami Velalar v. Rangaswami Konar* 86 L.W. 276 and the discussion in *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, we feel obliged to accept the submission of the Learned Counsel for the petitioner. In our view, it will not serve the purpose of the petitioner to relegate him to the ordinary civil process, since he may have to face the hurdle that the question got concluded by the adjudications under the Act.

2. Now we proceed to examine the merits of the case. We find that the Tribunal has kept in the forefront, the tests to be applied to find out whether the lands are private lands. The tests recapitulated by the Tribunal run as follows:

(1) If the land is known to be ryoti at its inception the only mode by which it could be converted into private land is by proof of continuous cultivation for a period of 12 years prior to the commencement of the Act.

(ii) Even if the nature of the land is not known continuous cultivation for the required period of 12 years before the commencement of the Act would conclusively establish that the land is private land.

(iii) If there is no proof of cultivation for a continuous period of 12 years before the commencement of the Act, the land may be proved to be private land by other methods provided the land was not shown to be once ryoti.

(iv) Cultivation of the lands or leasing of the lands under short-term leases may be one mode of proof.

(v) An intention to cultivate or resume for cultivation is also a test to decide that the land is private land and such intention may be established by any other means, not necessarily by cultivation and by cultivation alone.

(vi) The essence of private land is continuous course of conduct on the part of the landholder asserting and setting on the footing that he is the absolute owner thereof and recognition and acceptance by the tenants that the landholder has absolute right in the land.

(vii) Mere proof that the landholder is the owner of both the waram is not sufficient to prove that the land is private land.

The petitioner is a land-holder and when he claims that he is entitled to ryotwari patta, he must prove that the land is his private land. The Tribunal has discussed in our view threadbare all the relevant materials exposed in the case and it has come to the ultimate conclusion that there is no convincing or satisfactory evidence to show that the petitioner/land-holder had ever cultivated the lands personally or through tenants nor is there any evidence to show that at any time he had the ryot's interest by purchase or otherwise in the lands in dispute. Though Mr. K. Yamunan, Learned Counsel, for petitioner, drew our attention to the discussion in a decision in O.S. No. 511 of 1966 on the file of the District Munsif's Court, Sivaganga, to say that the claim of his client must be accepted, we do not think we should persuade ourselves to ignore the other pieces of evidence, which have spoken against the claim of the petitioner. While this Court exercises powers under Article 226 of the Constitution of India, it is not supposed to exercise an appellate jurisdiction, much less a second appellate one. The factual adjudication having been done by the Tribunal and we having not found any infirmity in the reasonings of the Tribunal, we have not found a warrant to interfere in writ appeal. Accordingly the writ appeal fails and is dismissed No Costs.